IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 52 OF 1998

Goa Housing Board,
A Statutory Authority set up under the
Goa, Daman and Diu Housing Act, 1968,
Having its office at Porvorim,
Bardez-Goa, through the
Managing Director/Secretary
of the Goa Housing Board. .... Appellant

V/s

1. Mr. Francisco C.J.A. Pinto Souza,
2. Mrs. Alina Caterina Maria
   do Carmo Pinto e Souza,
3. Mrs. Tereza Delicidade Perpetua
   Socoro de Pinto e Souza,
4. Miss Idalina Graciana Perpetua
   Socoro de Pinto e Souza
   All residents of Dattawadi Mapusa, Goa.

5. Deputy Collector,
Sub. Divisional Officer,
Ponda Sub Division,
Ponda, Goa. .... Respondents

Mr. A.N.S. Nadkarni, Advocate for the Appellant.
Mr. M.S. Sonak, Advocate for Respondents No. 1 to 4.

CORAM : R.M.S. KHANDEPARKAR &
N.A. BRITTO, JJ.

DATE : 21st NOVEMBER, 2007

JUDGMENT : (per N.A. BRITTO, J.)

This appeal is directed against the judgment dated 29/10/1997 of the learned Additional District Judge, Mapusa enhancing the compensation

payable to the respondents from Rs. 20/- per sq. mt. to Rs. 155.50 per sq. mt. as against the claim of the respondents for Rs. 300/- per sq. mt.

2. Some facts are required to be stated to dispose off the present appeal.

3. By virtue of notification issued under Section 4(1) of the Land Acquisition Act, 1894, published on Gazette dated 25/10/1984, the Government acquired 30165 sq. mts. of the respondents' land of Chalta No.1 of PT sheet No. 70 situated at Mapusa for the purpose of housing activities of the appellant-Goa Housing Board and by award dated 29/10/1987, the Land Acquisition Officer offered to the respondents, compensation at the rate of Rs. 20/- per sq. mt.

4. Dissatisfied with the said award of the Land Acquisition Officer, the respondents, the owners of the land, preferred a reference for enhancement and in support of their case for enhancement examined respondent No.1 as their witness. The respondents produced a sale deed-Exhibit 13 dated 9/12/1983 by which a plot of land admeasuring 1831 sq. mts. was purchased and in support thereof examined its purchaser Kamat/AW2. The respondents also produced another sale deed-Exhibit 14 dated 7/02/1980 by which 314 sq. mts. of land was purchased at Thaliwada and in support thereof examined Gaundalkar/AW3. The respondents also produced a letter-Exhibit 15 dated

12/08/1986 by which the Goa Housing Board had agreed to sell additional land to one Smt. Geeta Natekar who had earlier purchased plot no. 77 of the Goa Housing Board. The respondents also produced one sale deed-Exhibit RW1/A by which 565 sq. mts. of land was purchased at the rate of Rs. 20/- per sq. mt.

5. Admittedly, the respondents' land was situated within the limits of the Mapusa Municipal Council and in between St Xaviers College and the land earlier acquired for the housing activities of the Goa Housing Board. As per the respondents, the acquired land was being used for the annual sports of St. Xaviers College, the reason being that the track of 400 mts. could be used for one race. The learned Additional District Judge noted, and in our view rightly, that the land was by the side of St. Xaviers College at Mapusa on one side of it and on the other side there was the housing complex of the Housing Board, water and electricity facilities were very much available to the acquired land and other amenities such as schools, colleges, medical facilities were available in close proximity.

6. The learned Additional District Judge relying on ***Chimanlal V/s Special Land Acquisition Officer, Poona (AIR 1988 S.C. 1652)*** noted that the following were the plus factors of the acquired land;

(1) It was situated within the municipal area of Mapusa City,
(2) It was situated close to St. Xavier's College on one side

and the Housing Board Complex on the other,
(3) It is a flat land and a plateau,
(4) It had building potentiality as the land itself is acquired for that purpose,
(5) It had infrastructural facilities of water, electricity, telephone, nearness to School institution, medical facilities and shopping complex.

The learned Additional District Judge noted the following as minus points;

(1) It is about 1½ kms., away from the actual market,
(2) It was partly rocky,
(3) The land was undeveloped,
(4) The land was at the higher level than the market area,
(5) The land was large in size.

7. The learned Additional District Judge thereafter took Exhibit 13 – sale deed dated 9/12/1983 as a guide to fix the compensation payable to the respondents. The learned Additional District Judge noted that the plot of Exhibit 13 was by the side of highway going from Mapusa to Bicholim and was situated in a commercial locality than the acquired land and thereafter noted that the land of Exhibit 14 was sold at the rate of Rs. 40/- per sq. mt. and concluded that there was an increase of Rs. 40/- per sq. mt. per year for the city of Mapusa and thus fixed the price of the plot of sale deed Exhibit 13 at Rs. 993/- per sq. mt. and thereafter initially deducted 33% towards development, 20% for road widening and took a further deduction of 1/3rd and fixed the market value of the acquired land at Rs. 155.50 per sq. mt.

8. We have heard learned Counsel on behalf of both the parties.

9. Although, there are different methods for arriving at the market value of land acquired, it is now well settled that comparable sales method of valuation to assess the market value of land is preferred to other methods of valuation because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issue of notification under Section 4 of the Act but before that is done there are certain factors which are required to be fulfilled and only on fulfillment of those factors the compensation can be awarded, according to the value of the land reflected in the sales. The factors laid down inter alia are:

(i) The sale must be a genuine transaction,
(ii) The sale deed must have been executed at the time proximate to the date of issue of notification under Section 4 of the Act,
(iii) The land covered by the sale must be in the vicinity of the acquired land,
(iv) That the land covered by the sales must be similar to the acquired land, and
(v) The size of plot of the land covered by the sales must be comparable to the land acquired.

and if all these factors are satisfied there is no reason why the sale value of the land covered by the sales be not given for the acquired land and in case there are dissimilarities in regard to locality, shape, size or nature of land between land covered by sales and land acquired, it is open to the Court to proportionately reduce the compensation for acquired land than what is reflected in the sales depending upon the disadvantages attached with the acquired land *(*see ***Shaji Kuriakose and another V/s Indian Oil Corporation***

Ltd. and Others (2001 (7) SCC 650). In doing so some guesswork is permissible but what is impermissible are feats of imagination and misplaced sympathies.

10. Reliance was placed on ***Koyappathodi M. Ayisha Umma V/s. State of Kerala (AIR 1991 S.C. 2027)*** and it was contended before the learned Additional District Judge and it is contended before us as well that the sale deed of Exhibit 13 could not have been used as a guide to assess the compensation in respect of the acquired land.

11. In our view, the submission made needs serious consideration.

12. Admittedly, the acquired land was situated at the outskirts of the town, place where development was just picking up, after land was earlier acquired for setting up houses by the Goa Housing Board. The plot of sale deed – Exhibit 13 was situated in a commercial locality of Mapusa adjacent to the main road i.e. National Highway going from Mapusa to Bicholim. It appears that there were several houses of tenants situated in the plot-Exhibit 13 and there is no evidence whatsoever to indicate as to how the said tenants were dealt with. In other words the price of Rs. 833/- per sq. mt. of Exhibit 13 did not reflect the price of land alone. Moreover, it was purchased by Kamat/AW2 who was a businessman, an engineer and a civil contractor for

the purpose of putting up a commercial cum residential complex. It was admitted by him that the tenants' houses were demolished by him and he had constructed a multi-storeyed building for commercial and residential purposes. The Apex Court in ***Koyappathodi M. Ayisha Umma*** (supra) stated that a small extent of land together with buildings standing thereon does not form any reasonable basis or guide to determine market value of a large extent of 6 acres of the acquired land. In our view, the sale deed-Exhibit 13, considering that it had tenanted houses and in the absence of any evidence as to how the tenants were dealt with and as otherwise was situated in a commercially locality, could not have been used as a guide to fix the price of the acquired land which was situated at the outskirts of the town. Likewise, Exhibit 14 sale deed dated 7/02/1980 also could not have been used as a guide and it is because Gaundalkar/AW3 who was examined in support thereof stated that the sale price of Rs. 640/- was only on paper but in fact what was paid was at the rate of Rs. 1,100/- per sq. mt. In other words, the said deed does not appear to be genuine. Such a sale deed which does not reflect the correct price also cannot be taken as a guide for the purpose of fixing the compensation. Regarding Exhibit-14 the land agreed to be sold by the Goa Housing Board was adjacent to the plot no.77 earlier acquired by Smt. G. Natekar and being so she must have paid a higher price for the said land as it was adjacent to her plot. In other words the said land had special advantage to her and she must have definitely paid special or higher price.

Price so paid would not represent the price which a willing purchaser would pay in normal market conditions.

13. Nevertheless, it does not mean that the respondents were not entitled to higher compensation than the one awarded to them by the Land Acquisition Officer. By the very notification published on Gazette dated 25/10/1984 large tract of land was acquired of which 10491 sq. mts. belonged to the Communidade of Mapusa. At the request of parties, the appeal by Communidade was heard along with this appeal. If the learned Additional District Judge in this case fix the compensation based on Exhibit 13-sale deed dated 9/12/1983, another Additional District Judge in the case of Communidade of Mapusa fixed the market value on the basis of sale deed dated 17/3/1979, though the sale deed Exhibit – 13 dated 9/12/1983 was also produced in that case. Relying on the said sale deed dated 17/03/1979 we have assessed the compensation payable at Rs. 69/- per sq. mt. (but reduced it further because the land belonged to the Communidade) and the said compensation at the rate of Rs. 69/- per sq. mt. could also be awarded to the respondents herein.

14. In ***M/s. Printers House Pvt. Ltd. V/s Mst. Saiyadan (deceased) by LR's & Ors. (AIR 1994 S.C. 1160)*** the Apex Court stated that:-

> "If 'Comparable Sales Method of Valuation of land' is adopted for determining the market-value of an acquired plot

> of land, it generally holds good for determination of the market-value of several acquired plots of land if acquisition of all such plots of land is made pursuant to the same preliminary notification."

15. In ***Union of India V/s Shri Dhyan Singh & Ors. (2000 AIR S.C.W. 4936)*** the Apex Court stated thus;

> "In view of the decision of this Court in Civil Appeal no. 4405 of 1997 in which the land value has been fixed at Rs. 16,750/- per bigha for lands covered by the same notification there is no reason not to adopt the same value as for the land involved in this appeal also."

16. Again in ***Bhim Singh and Ors. V/s. State of Haryana and anr. (AIR 2003 S.C. 4382)*** the Apex Court stated thus:

> "Even otherwise when compensation has already been fixed by the High Court in earlier proceedings and when in one such proceeding this Court has already approved the rate fixed then in our view the best method would be to look at the earlier judgments and awards. Therefore the High Court cannot be faulted for having fixed compensation on the basis of earlier judgments."

17. In the light of law laid down by the Apex Court, and as we have fixed the compensation of Rs. 69/- per sq. mt. in First Appeal No. 124 of 2003 filed by the Communidade of Mapusa, we are inclined to award the same compensation to the respondents herein, as well. There is no doubt that the respondents' land in this case was still larger in area than that of the Communidade but it appears that it was more flat than that of said Communidade and on that count we are not inclined to make any further

deduction.

18. Consequently, we allow the appeal partly and modify the impugned award and fix the market value of the acquired land at Rs. 69/- per sq. mt. with all consequential statutory benefits.

R.M.S. KHANDEPARKAR, J.

N.A. BRITTO, J.

NH/-